

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

V.

37.158 ACRES OF LAND, MORE OR LESS,
SITUATE IN HIDALGO COUNTY, STATE
OF TEXAS, HIDALGO AND CAMERON
COUNTIES WATER CONTROL AND
IMPROVEMENT DISTRICT NO. 9, *et al.*,
Defendants.



CIVIL ACTION NO. 7:20-cv-00025
(LEAD CASE)

TRACTS RGV-WSL-8000, 8000-2, 8006
and 8007

UNITED STATES OF AMERICA,
Plaintiff,

V.

24.263 ACRES OF LAND, MORE OR LESS.
SITUATE IN HIDALGO COUNTY, STATE
OF TEXAS, HIDALGO AND CAMERON
COUNTIES WATER CONTROL AND
IMPROVEMENT DISTRICT NO. 9, *et al.*,

Defendants.

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CIVIL ACTION NO. 7:21-cv-00022
(MEMBER CASE)

TRACT RGV-WSL-9002-1

JOINT MOTION TO MODIFY EXISTING SCHEDULING ORDER

Plaintiff, United States of America, and Defendant Hidalgo and Cameron Counties Water Control and Improvement District No. 9 (collectively, hereafter “the Parties”) pursuant to Federal Rule of Civil Procedure (“FRCP”) 16(b)(4), move the Court to modify its existing Rule 16 Scheduling Order¹ and respectfully request to (1) extend all remaining deadlines for at least one hundred fifty (150) days as provided below; and (2) to include rebuttal expert designation and

¹ Dkt. No. 42.

mediation deadlines. This is the fifth motion filed by the Parties in this case requesting a modification to an existing scheduling order.

I. BACKGROUND

1. In this consolidated action, the United States acquired a fee simple interest in land identified as Tracts RGV-WSL-8000, 8000-2, 8006 and 8007 (37.158 acres, more or less) on January 28, 2020,² and in Tract RGV-WSL-9002-1 (24.263 acres, more less) on January 13, 2021³ for purposes of the Border Infrastructure Project in Hidalgo County. Hidalgo and Cameron Counties Water Control and Improvement District No. 9 (“HCCID9”) owned tracts RGV-WSL-8000, RGV-WSL-8000-2, RGV-WSL-8006, RGV-WSL-8007 and RGV-WSL-9002-1 on the respective dates of taking.⁴

2. The Court granted consolidation on July 26, 2021, as the lead case (7:20-cv-25) and member case (7:21-cv-7) involved common questions of fact and law regarding the taking of land that is contiguous and utilized by HCCID9 in connection with operating an 800-acre water reservoir.⁵ At a May 13, 2022 Status Conference held by the Court, the Parties provided an update on revestment of land taken in this consolidated action and resolution of the issue of just compensation for purposes of issuance of a scheduling order.⁶ The Parties reported that they were finalizing an agreement for partial revestment of Tract RGV-WSL-9002-1 taken in member case (7:21-cv-7); however, because the Parties did not agree on revestment of Tracts RGV-WSL-8000, RGV-WSL-8000-2, RGV-WSL-8006, RGV-WSL-8007, the Parties requested that a scheduling order be issued with an estimated jury trial date in February 2023.⁷

² Dkt. Nos. 5 & 5 in Lead Case 7:20-cv-00025.

³ Dkt. No. 5 in Member Case 7:21-cv-00007; Dkt. No. 5 in Lead Case 7:20-cv-00025.

⁴ See Schedule “G,” Dkt. No. 2-1 in Lead and Member Cases.

⁵ Dkt. No. 36 at 1; Dkt. No. 35 at 2, ¶ 3; at 3, ¶ 6 in Lead Case 7:20-cv-00025.

⁶ 05/13/22 CM/ECF Minute Entry.

⁷ *Id.*

3. On May 13, 2022, the Court issued a Rule 16 Scheduling Order setting this matter for Final Pretrial Conference on February 6, 2023, and Jury Selection for February 7, 2023.⁸ The next approaching deadlines under the Court's Scheduling Order are Defendant HCCID9's expert designation deadline set for October 17, 2022; followed by the United States' expert designation deadline of November 18, 2022.⁹

JOINT REQUEST TO MODIFY EXISTING SCHEDULING ORDER

4. The Parties request that the Court extend the expert designation deadlines for at least one hundred fifty (150) days. At the request of HCCID9, the United States has ordered surveys describing the land subject to revestment and the land retained by the United States under the agreement for partial revestment that the Parties² will finalize upon completion of the surveys and land descriptions. The United States has completed the agency approval process and secured funding for the surveys on September 14, 2022; however, the tentative completion timeline for the surveys is January 2023. Thus, the Parties request that existing scheduling order deadlines be extended for a period after February 2023 for finalization of revestment and resolution of just compensation to HCCID9 for the interest of land being revested and interest of land retained by the United States.

5. Furthermore, the United States contends a modification of the existing Scheduling Order is necessary at this time as the United States is preparing a Memorandum of Agreement ("MOA") for HCCID9's consideration addressing future construction of border infrastructure within land taken in this case. In lieu of revestment, HCCID9 is seeking just compensation for the fee estate taken in Tracts RGV-WSL-8000, RGV-WSL-8000-2, RGV-WSL-8006, RGV-WSL-8007. However, because (1) the United States is not currently authorized to proceed with

⁸ Dkt. No. 42 at 2.

⁹ *Id.* at 1.

construction of border infrastructure, and (2) prior construction plans produced by the United States, subject to a protective order, are not currently authorized for use in this case, the United States has proposed presenting an MOA in an attempt to mitigate the impact that future border infrastructure construction will have on HCCID9 water reservoir, its inlet canal, and other infrastructure on or surrounding the land taken. The Parties will endeavor to agree on an MOA within the requested deadline extensions below so that retained experts can account for the MOA in their respective appraisal reports. However, it is possible that no MOA will be reached, and if one is not reached, HCCID9 contends the prior construction plans would have to be used by appraisers in determining just compensation; the United States disagrees with the contention to use plans of infrastructure it has no authority to build. The Parties further agree that rebuttal experts may be necessary in this case based on their assessment of potential valuation issues resulting from this case. The Parties will further attempt to mediate this case at the close of discovery and request that a deadline be included in a modified scheduling order.

6. To allow the Parties an opportunity to obtain surveys for revestment of land and resolution of just compensation, and to attempt to reach an agreement on a MOA regarding future construction of border infrastructure on the land and water interest for resolution of the issue of just compensation, the Parties request that the Court modify its existing scheduling order as follows:

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|---|-------------------------------|
| EXPERTS: | from 10/17/2022 to 03/16/2023 |
| DEFENSIVE EXPERTS: | from 11/18/2022 to 04/17/2023 |
| REBUTTAL EXPERTS: REBUTTING PARTY WITH BURDEN OF PROOF | 04/28/2023 |
| REBUTTAL EXPERTS: REBUTTING PARTY WITH NO BURDEN OF PROOF EXPERTS | 06/01/2023 |

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|---------------------------------|-------------------------------|
| DISCOVERY: | from 12/09/2022 to 06/30/2023 |
| MEDIATION/ADR: | from 12/09/2022 to 07/14/2023 |
| PRETRIAL MOTIONS DEADLINE: | from 12/13/2022 to 07/28/2023 |
| MOTIONS HEARING: | from 01/20/2023 to 08/28/2023 |
| JOINT PRETRIAL ORDER: | from 01/30/2023 to 09/07/2023 |
| FINAL PRETRIAL CONFERENCE: | TBD by Court |
| JURY SELECTION & TRIAL SETTING: | TBD by Court |

CERTIFICATE OF CONFERENCE

7. Undersigned counsel for Plaintiff has conferred with undersigned counsel for Defendant and both Defendant and Plaintiff agree to the dates requested in this motion and believe that the extension is in the best interest of Plaintiff and Defendant.

Accordingly, the Parties respectfully request the Court to extend the dates in the Court's Rule 16 Scheduling Order as requested in this joint motion.

Respectfully submitted,

FOR DEFENDANTS:

FOR PLAINTIFF:

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CERTIFICATE OF SERVICE

I certify that on October 14, 2022, a copy of the foregoing document was served on counsel for Defendants via CM/ECF notice of electronic filing.

s/ Baltazar Salazar

Baltazar Salazar

Assistant United States Attorney